Delhi District Court
Sunil Kumar vs . Santosh on 6 November, 2013
Author: Ms. Sujata Kohli

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SUNIL KUMAR Vs. SANTOSH

HMA No. 374/12

06.11.2013

O R D E R

Respondent/wife has sought interim maintenance U/S 24 of HMA @ Rs. 25,000/□pm for herself and besides a lumpsum of Rs. 21,000/□towards litigation expenses. The main petition wherein this application has been filed is one for judicial separation U/S 10 of Hindu Marriage Act filed by the husband.

2 Parties were married on 06.05.2011 at Delhi as per Hindu Rites and Ceremonies. There is no issue from the wedlock. 3 Consequent to the marital discord, the state of things has lead the parties to Courts. Irrespective of the merits, to be dealt with other later stage, the facts necessary for the purpose of deciding the question of interim maintenance has stated are that the applicant/wife has no source of income and is living now at the mercy of her parents and brother at her parental house, while the non□applicant/husband is alleged to be a man of means and working in a private limited company and getting a fixed salary of Rs. 15,000/□pm and apart from that he is also taking classes as skating Coach in three public schools, from where he is having additional monthly income @ Rs. 20,000/□pm. Further, it is also alleged that he is running a Personal skating Coaching Center on his own in the evening and getting a further additional income of Rs. 20,000/□therefrom, thus, according to the applicant/wife, the non□applicant/husband is having a total monthly income of Rs. 55,000/□at least. Further it is alleged that even the mother of the non□applicant/husband is gainfully employed and drawing a handsome salary sufficient to meet the entire expenses of their family. The brother of the non□applicant/husband is stated to be working in a bank at Greater Noida as Cashier and drawing handsome salary. 4 The non□applicant/husband has no other liability to maintain except himself and the applicant/wife. According to applicant/wife, the non□applicant/husband is enjoying a luxurious lifestyle. She herself has assessed her needs and requirements @ Rs. 25,000/□pm. 5 In his reply, the non□applicant/husband has firstly denied that applicant/wife has no source of income. According to the non□applicant/husband, the applicant/wife is a graduate from Delhi University and gainfully employed as a Lab Technician in Delhi University and earning Rs. 25,000/□pm. Besides, she is also th alleged to be imparting coaching to a number of students of 12 Standard from where she is having additional income of Rs. 25,000/□pm, and thus, her total income is alleged to be Rs.

45,000/□pm. 6 Further as regards his own employment and income, he has denied being employed with a private limited company and also taking any coaching classes in skating. He has denied his income being not less than Rs. 55,000/□pm.

7 As regards the alleged income of his mother as well, he has admitted that she is employed but only as a 'Safai Karamchari'. He has even stated in para-10 in his reply that due to financial constrained, he has not even been able to pay his quarterly LIC premium of Rs. 1192/-for the quarter ending 28.02.2013. 8 However, in his entire reply, the non-applicant/husband has failed to disclose his actual employment and income as per his own version. He is silent about these basic aspects. 9 On his detailed affidavit, it has been disclosed by the th non-applicant/husband that he is only 12 passed. Presently he is unemployed. His past occupation was only as a Collection Boy with Smart Data Processing Service till June, 2012 on monthly wages of Rs. 4000/-and conveyance expenses. He has no other kind of income nor any valuable asset, immovable or movable. 10 As regards his bank account, according to him he has hardly any amount lying therein worth mentioning, though the account is with HDFC Bank. He claims that only about a sum of Rs. 65/-is lying as balance. At the same time, it has been disclosed that he is having a LIC Policy for an annual premium of Rs. 4756/-, being paid quarterly @ Rs. 1189/-(The amount stated being self-contradictory).

11 He also maintains a mobile phone. His expenses include rent and maintenance as well as electricity, water and gas @ Rs. 15,00/-pm. 12 As regards the general standard of the family, his mother is stated to be employed as Safai Karamchari with BSES Rajdhani. His brother is employed in Bank of Baroda as a class IV employee, on compassionate ground after the death of his father. The mother and brother are residing separately in their respective rented houses, while the non-applicant/husband is living separately. He states to be residing in a one room set. The average monthly withdrawal from the bank is stated to be the entire earning.

13 The applicant/wife on the other hand is admittedly, a Graduate and also a diploma in Library Science, and she admits to have been previously employed as a Lab Attendant in Daulat Ram College, Delhi University, presently she also states herself to be unemployed. She was working on an Ad-hoc basis till prior to two months of her marriage, and she was never allowed to continue in service for a period of three months on each occasion. She used to be relieved some days prior to expiry of three months. However, finally, she was relieved permanently. Her saving account is with Overseas Bank with the bank balance being Rs. 29816/- She describes herself to be simple middle class family. However, the expenditure on her marriage, alleged to have been incurred is stated as Rs. 18 lacs. She travels by public transport.

Arguments heard.

14 The non-applicant/husband has filed the attested copy of his bank statement of account for the period from 11.07.2011 till 09.09.2013. The said account since beginning is showing regular entries with respect to salary from Smart Data Processing but the amount is varying, ranging from Rs. 6197/-as reflected in entry dated 10.09.2011, and Rs. 8427/-as reflected in entry dated 08.06.2012. Last entry dated 09.09.2013 and showing only a deposit of Rs. 200/-and the bank balance being also Rs. 200/- However, apart from the different amounts of the salary reflected, there is no other deposit reflected therein. 15 Be that as it may, the said salary is more than the Rs. 4000/-as was being claimed by the non-applicant/husband. Further he has not stated any reason as to why he left the said given job and when. Silence is indicative of concealment of his real financial status and his actual occupation and income as on date. 16 As regards the bank account

statement of the applicant/wife herself, from Indian Overseas Bank, no doubt, her bank statement starting from 13.11.2010 has been reflecting certain deposit entries of Rs. 49,000/□on various dates, as many as, eight dates, but the same was explained by Ld. Counsel during arguments as well as by the applicant in person that the said deposits were made by her family members prior to the marriage, to be used towards the expenses of the impending marriage, the date of marriage between the parties being 06.05.2011 and the last deposit entry being 19.02.2011.

17 Thereafter, the statement is showing deposits of different amounts like Rs. 6155/□, 7328/□and some other very small amounts.

18 However, what is noticeable is that this statement of account is not reflecting anywhere the salary which was being received by the applicant/wife from her admitted employment as Lab Attendant. This would imply that she was maintaining some other bank account for the salary.

19 Fact remains that the only material document available before the Court relating to the financial position of the parties is the bank statements above referred. Apart from this, the general standard of living of the parties being admittedly almost of the lower middle class. Further, the educational qualification of the non□th applicant/husband being only 12 , while the applicant/wife being much better qualified being admittedly a Graduate as well a diploma holder in Library Science. She also has not assigned any reason as to why she has not tried to do any other job with the said qualification. It is not her case that she searched for one and could not obtain. Admittedly, there is no issue of the wedlock, and as such, the applicant/wife is free to take up an employment. As regards the non□applicant/husband, even he has tried his best to conceal his income. The self□contradiction is evident between his claim of his last drawn salary being only Rs. 4000/□and his own bank statement referred above, which by itself shows that he was receiving at least more than Rs. 8000/□ pm. Further also, he is silent about any special reason that may exist for his having left the said job and to be unemployed. The applicant/wife has also failed to produce any supporting material with respect to her claim that non□applicant/husband has been taking coaching classes in skating in as many as three schools and also running an independent skating institute.

20 It is quite realistic that in a claim for maintenance, the claiming spouse always tries to exaggerate the income and the contesting spouse tries to underplay his resources. But this should not be carried out to an extreme as has been done in the present case.

21 Going by the material on record, what becomes clear that the non□applicant/husband has withdrawn all his money from the said bank account and tried to show a meager balance of Rs. 65/□ therein, which by itself is not believable. In view of the concealment about his actual income, as already highlighted, it can safely assumed that he is at least earning about Rs. 15,000/□pm on the minimum.

22 Be that as it may, since the applicant/wife herself has failed to disclose the reason for her not doing any job in spite of being able bodied and also educationally and professionally qualified, and much better qualified than the non□applicant/husband, she has failed to make out an entitlement for any interim maintenance for herself.

23 Reliance is being placed on a decision of Hon'ble High Court of Madhya Pradesh in the case of Smt. Mamta Jaiswal Vs. Rajesh Jaiswal Civil Revision No. 1290/99 decided on 24.03.2000 11(2000) DMC 170 -

> "In view of this, the question arises, as to in what way Section 24 HMA of the Act has to be interpreted : Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure? Whether such spouse should be permitted to get pendente lite alimony at higher rate from other spouse in such condition? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself or herself in spite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversory by implementing the provisions of law suitable to their purpose. In the presence case Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C. M.Ed. Till 1994 she was serving in Gulamnbi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service? It really puts a bug question which is to be answered by Mamta Jaiswal with sufficient congent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, cannot be permitted to sit idle and and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the court for seeking a relief against her. The case may be vice versa also. If a husband well qualified, sufficient enough to earn, sit idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want any army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, at least, has to make sincere efforts in that direction. If this criteria, is not applied, if this attitude is not adopted, there would be a tendency growing amongst such 'litigants' to prolong such litigation and to milk out the adversory who happens to be a spouse, once dear but for away after an emerging in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That cannot be treated to be aim, goal of Section 24. It is indirectly against healthyness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient efforts

> are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours."

In view of the above discussion, the application for interim maintenance is declined.

Application disposed off.

(SUJATA KOHLI) Announced in Open Court ADDITIONAL DISTRICT JUDGE today i.e. 06.11.2013 WEST/DELHI/06.11.2013